UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte CHARLES R. BERG and ANDREW S. PASCAL

Appeal No. 2005-0167
Application No. 10/272,722

ON BRIEF

Before HAIRSTON, CRAWFORD, and LEVY, Administrative Patent Judges.

CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 41 to 60, which are all of the claims pending in this application. Claims 1 to 40 have been canceled.

We reverse.

The appellants' invention relates to a system for and a method of capturing a player's image for incorporation into a game, especially a casino type wagering video game (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The prior art references

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Lambert	5,012,522	Apr. 30, 1991
Penzias	5,397,133	Mar. 14, 1995
Parulski et al. (Parulski)	5,595,389	Jan. 21, 1997
Takemoto et al. (Takemoto)	5,984,780	Nov. 16, 1999

The rejections

Claims 47, 54 and 60 stand rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement.

Claims 41 to 60 stand rejected under 35 U.S.C. § 103 as being unpatentable over Takemoto in view of Lambert, Penzias and Parulski.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (mailed March 30, 2004) for the examiner's complete reasoning in support of the rejections, and to the brief (filed February 17, 2004) and reply brief (filed June 1, 2004) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

We turn first to the examiner's rejection of claims 47, 54 and 60 under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. We note initially that the test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language. See Vas-Cath, Inc. v. Mahurkar, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1116-17 (Fed. Cir. 1991) and In re Kaslow, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983).

The examiner is of the opinion that the specification fails to convey that the appellants had possession of subject matter recited in the claims directed to storing an image on a player tracking card and comparing an image on a tracking card with a captured image. The examiner recognizes that page 3, lines 13 to 16 of the specification states that images captured may be used for verification when a player

uses a tracking card but argues that nowhere does it state that the tracking card stores an image of the player for comparison to the captured image.

The specification states at lines 13 to 16:

> The images captured on the electronic sensor board may be selectively used for a variety of purposes, including verification of the identity of a player with a player tracking card used by the player of the machine 10 and including security purposes.

We will not sustain this rejection. In our view, the specification discloses that a player tracking card could be used to verify the identity of the player from the captured electronic image. The specification does not explicitly disclose that a photo image is contained on the tracking card. However, in our view, a person of ordinary skill in the art would have known that tracking cards include photo images. We note that Takemoto is evidence that it was known to include photo images on tracking cards (see e.g. Takemoto, col. 17, lines 26 to 29). Therefore, the specification conveys to an artisan in the field that the appellants had possession of a method that utilizes the captured image and an image on the tracking card to identify a player. We agree with the appellants that it is only logical that the identity of the player can be verified by comparing the image captured and the image on the tracking card. As we explained above, there is no requirement for the specification to literally support the language of the claims.

We turn next to the examiner's rejection of claims 41 to 60 under 35 U.S.C.

§ 103 as being unpatentable over Takemoto in view of Lambert, Penzias and Parulski.

Takemoto describes an image display gaming system having two embodiments. In the first embodiment, a player's image is captured and taken into the gaming machine and displayed in place of a specific symbol (col. 4, lines 32 to 38). The player may select the symbol to be replaced with the captured image. The object of this embodiment is to increase the enjoyment of the player (col. 16, lines 7 to 9). In another embodiment, the captured symbol may be used for security purposes. When an illegal act is detected, the image of the player can be used to capture the image of the person performing the illegal act (col. 26, lines 1 to 6).

Lambert describes a face recognition machine to capture the image of a face. The machine of Lambert first searches for the presence of eyes and if eyes are present it searches for a nose and then a mouth proximate to the eyes (col. 8, lines 49 to 54). If no eyes, nose or mouth is located, the machine will take a new image (col. 8, lines 13 to 21). Lambert describes the process of locating eyes as:

> A pair of eyes are recognized as a pair of comparatively dark adjacent elipses, which form an eye signature. If one finds two dark objects with nearly the same size, one next to the other, then a possible pair of eyes is detected. A "dark" object in this case is an object with a light area all the way around it. . . the only task the face location algorithm has is checking for two dark objects (nose, mouth) below and between two others that are side by side (eyes) [col. 8, lines 22 to 31].

If the machine in Lambert determines that there is no face (eyes, nose, mouth), it discards the image and reacquires an image (col. 8, lines 18 to 21).

In making this rejection, the examiner recognizes that Takemoto lacks a teaching of scanning the image for facial features and rejecting the images if they do not include a minimum number of facial features as is recited in claims 41, 48 and 55 from which all the other claims depend. The examiner relies on Lambert for this teaching and concludes:

> ... It would have been obvious to use a facial recognition program in the invention of Takemoto et al. When one takes an image and is going to use that image as a face of a player, one would want to ensure that the image was captured correctly. By scanning the image to determine if it comprises specific facial features, one can be sure the image was captured properly or may reject the image and gather another. This way an image is not input into any files or programs that is not complete or is deformed. Consequently, the facial recognition program ensures that only good images make it to the next level of processing [answer at page 8].

We will not sustain this rejection as we agree with the appellants that there is no motivation to combine the teachings of Takemoto and Lambert. In Takemoto's first embodiment, the player's image replaces a symbol in the game to enhance the player's enjoyment of the game. Lambert discards the image if it is determined that a face with eyes, mouth and nose is not detected. As Lambert searches for dark objects or eyes, Lambert would not keep the image if the full view of the player's face were not captured such as if the player had a hat or sunglasses that obscured his eyes. This makes sense for Lambert as it is directed to a system for identification purposes. However, such

does not make sense in the Takemoto environment as the image is only used for replacement of a symbol in the game for the enjoyment of the player.

In regard to Takemoto's second embodiment, in which the captured image is used for security purposes, we also agree with the appellants that it would not be obvious to analyze a captured image to determine whether there is an eye, nose and mouth in the correct position and to discard the image if such is not the case. As the second embodiment of Takemoto is concerned with catching cheaters, in our view, a person of ordinary skill in the art would want all of the images captured saved because even if the eyes were obscured by, for example, sunglasses or a low fitting hat, the rest of the facial features captured along with any clothes or accessories worn would be useful in making an identification of a cheater. We conclude that there is no motivation to combine the teachings of Takemoto and Lambert.

In view of the foregoing, we will not sustain the rejection of claim 41. We will likewise not sustain the rejection of claims 42 to 60 as the rejection of these claims likewise depends on the combination of Takemoto and Lambert.

The decision of the examiner is reversed.

REVERSED

KENNETH W. HAIRSTON Administrative Patent Judge	)	
MURRIEL E. CRAWFORD Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
STUART S. LEVY Administrative Patent Judge	)	

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